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J.M., Appellant)	
)	
and)	Docket No. 16-1570
)	Issued: May 24, 2018
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Lyons, NJ, Employer)	
)	

James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 27, 2016 appellant, through counsel, filed a timely appeal from a March 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.³

³ The record provided the Board includes evidence received after OWCP issued its March 2, 2016 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease in the performance of duty as alleged.

FACTUAL HISTORY

On November 23, 2015 appellant, then a 64-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that she had developed a right knee condition due to factors of her federal employment. She indicated that she first became aware of her condition on November 16, 2011, but it was not until January 13, 2012 that she first realized it was related to her employment. Appellant initially claimed to have injured her right knee due to a fall on November 16, 2011. She further indicated that, after resuming full-duty work, which included prolonged standing on a cement floor, her right knee worsened in January 2012 and she suffered pain and discomfort on a daily basis. As for the timing of her notice of injury/claim, appellant indicated that she had previously filed a claim with the employing establishment, which OWCP assigned File No. xxxxxx255.⁴

The case record associated with OWCP File No. xxxxxx255 is not currently before the Board. However, that claim was previously on appeal before the Board.⁵ As noted in the Board's May 5, 2016 decision, OWCP had accepted appellant's January 13, 2012 traumatic injury claim (Form CA-1) for a right knee contusion. Appellant resumed her regular duties on January 17, 2012. On August 22, 2013 she filed a claim for recurrence of disability (Form CA-2a) beginning June 3, 2013.⁶ The date of recurrence coincided with appellant's right knee surgical procedure to address her moderate-to-severe osteoarthritis. In a November 26, 2013 decision, OWCP denied appellant's recurrence of disability claim, which the Branch of Hearings and Review affirmed by decision dated September 2, 2015.

In a January 22, 2016 development letter, OWCP advised appellant that it had not received any documentation in support of her occupational disease claim. It explained the basic elements for entitlement to FECA benefits, and afforded her 30 days to submit the required factual and medical evidence in support of her claim. OWCP similarly requested information from the employing establishment.

Appellant submitted a February 11, 2016 factual statement in response to OWCP's development letter. She explained that she originally fell at work on November 16, 2011 and

⁴ On the Form CA-2, the employing establishment indicated that it was not until November 23, 2015 that appellant first reported her condition to her supervisor.

⁵ *J.M.*, Docket No. 16-0306 (issued May 5, 2016). The Board affirmed the denial of appellant's recurrence of disability claim, finding that the medical evidence of record did not adequately explain how an accepted right knee contusion caused appellant's diagnosed conditions and disability beginning June 3, 2012, as opposed to a new occupational disease or injury. The Board further found that the medical evidence of record supported that appellant experienced new work factors supporting "new occupational disease or injury, an aggravation of preexisting bilateral osteoarthritis, instead of a spontaneous change in the January 13, 2012 right knee contusion."

⁶ Appellant previously filed a notice of recurrence for medical treatment beginning March 29, 2013. By decision dated July 5, 2013, OWCP denied appellant's recurrence claim for additional medical treatment. *Id.*

landed on both knees. Appellant also explained that on January 13, 2012 she severely bumped her right knee and received a lot of treatment under that claim. Her food service job duties required standing for long periods while on the tray line. Most days appellant stood for approximately 4½ hours on the tray line, but on Fridays and Saturdays, she often stood for 7 hours. She explained that she was not permitted to sit while working on the tray line, and there were no other precautions she could have taken to minimize the effects of her activities. Appellant explained that her knee became painful after the January 13, 2012 incident, but she continued to work. She noted that she underwent a total knee replacement on June 3, 2013. Appellant explained that her condition developed gradually, but became really painful after the January 13, 2012 incident. With respect to her prior claim, OWCP File No. xxxxxx255, appellant noted that her case was currently on appeal before the Board following a September 2, 2015 decision by a representative of OWCP's Branch of Hearings and Review. She noted that the hearing representative found that the "new or intervening exposure negate[d] a spontaneous worsening of the accepted right knee contusion." Appellant explained that she filed the current occupational disease claim based on the hearing representative's finding that she implicated her post-January 13, 2012 job duties as the cause of the right knee replacement.

Appellant noted that her symptoms included pain, and she was much worse at the end of the day after standing in the tray line all day long. Her leg would feel better when she got home and sat down and took the weight off. Appellant indicated that she was overweight (5'6" and 198 pounds) which made it very difficult to constantly stand, especially Fridays and Saturdays when she would be on her feet seven hours a day. She also noted that there were no previous or similar condition(s) other than the pain she was having in her knee at work since the original incident of November 16, 2011 and the subsequent incident of January 13, 2012. Appellant believed that she significantly aggravated her knee by standing on it in the tray line. While appellant did some walking as part of life, she attributed her problem to constant standing on the tray line, as well as the original accidental injuries at work.

OWCP also received a copy of appellant's food service worker position description and a February 16, 2016 narrative statement from appellant's supervisor, F.B. F.B. indicated that he was not present so he could not agree with appellant's claim. He further indicated that many employees had been working in nutrition and food service for more than 40 years and continually performed the same assignments as appellant, and for this reason the employing establishment disputed appellant's claim. F.B. indicated that appellant was required to push and/or pull food trucks to a ward, which consisted of 24 trays or less, weighing less than five pounds each. Appellant would then distribute the food trays to patients. She performed these duties daily, once a day, rotating after four hours. F.B. explained that appellant received her first assignment in the morning, and then she was rotated to a different assignment after lunch break. With regard to precautions, he noted that all employees were provided back brace supports and classes on how to lift and bend. They also received two 15-minute breaks, one in the morning, and one at the end of the day. Also, each job was rotated so no one employee was assigned to the same job for eight hours. F.B. also noted that desserts were placed on a slotted mobile truck so it was easier to transport throughout the kitchen. Additionally, he indicated that appellant first reported the incident on November 23, 2015. F.B. also indicated that appellant's assignments were in accordance with her position description, and they did not vary from her everyday duties according to her position description.

OWCP did not receive any medical evidence in response to its January 22, 2016 claim development letter.

By decision dated March 2, 2016, OWCP advised appellant that it would not issue a new merit decision with respect to her current occupational disease claim. It explained that the current claim was a duplicate of a claim she previously filed. OWCP noted that appellant had an accepted traumatic injury claim for a January 13, 2012 right knee contusion under File No. xxxxxx255, and that she had filed a recurrence claim in April 2013, which was denied on July 5, 2013. It further noted that in August 2013 appellant filed a second recurrence claim under File No. xxxxxx255 for disability beginning June 3, 2013. This latter recurrence claim was denied by decision dated November 25, 2013, and affirmed by a representative of the Branch of Hearings and Review on September 2, 2015.

With respect to the November 23, 2015 occupational disease claim (Form CA-2) presently before the board under File No. xxxxxx142, OWCP noted that appellant attributed her condition to prolonged standing on a cement floor, and listed January 13, 2012 as the date she first realized her disease or illness was employment related, which was the same date of injury for the previously accepted right knee contusion. It indicated that appellant currently claimed the same conditions as stated on her two prior recurrence claims, and had not cited any new work factors. Rather, she merely raised the same issues previously denied as a recurrence claim under OWCP File No. xxxxxx255. OWCP, therefore, declined to address the merits of the occupational disease claim in OWCP File No. xxxxxx142, finding that it was duplicative of appellant's recurrence claim under File No. xxxxxx255. It advised appellant that she must utilize the appeal rights available to her under OWCP File No. xxxxxx255.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁸

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the

⁷ See *supra* note 2.

⁸ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁹

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁰

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.¹¹

OWCP's procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.¹²

ANALYSIS

The Board finds that the case is not in posture for decision.

By decision dated March 2, 2016, OWCP denied the current occupational disease claim, File No. xxxxxx142, finding it was a duplicate of appellant's previously denied recurrence claim under OWCP File No. xxxxxx255. However, when the Board issued its May 5, 2016 decision affirming the September 2, 2015 hearing representative's decision, it found that the medical evidence of record supported that appellant sustained a "new occupational disease or injury, an aggravation of preexisting bilateral osteoarthritis, instead of a spontaneous change in the January 13, 2012 right knee contusion."¹³ The Board, therefore, finds that appellant's new claim for an occupational disease under OWCP File No. xxxxxx142 is not a duplicate of the recurrence claim in File No. xxxxxx255. As such, OWCP File No. xxxxxx142 will be remanded to OWCP for a *de novo* review.

The Board also notes that OWCP's procedures provide that cases should be doubled when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body.¹⁴ On remand OWCP should combine OWCP File Nos.

⁹ *Victor J. Woodhams, id.*

¹⁰ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹¹ 20 C.F.R. § 10.5(x).

¹² See Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Creation of Cases*, Chapter 1.400.7 (February 2000); see also *S.W.*, Docket No. 16-0219 (issued April 5, 2016); *W.M.*, Docket No. 09-1609 (issued April 5, 2010).

¹³ *J.M.*, Docket No. 16-0306 (issued May 5, 2016).

¹⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

xxxxxx142 and xxxxxx255. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 24, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board